

SECOND REGULAR SESSION

SENATE BILL NO. 1174

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time March 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5395S.011

AN ACT

To repeal sections 306.114, 306.117, 577.020, 577.026, 577.037, and 577.208, RSMo, and to enact in lieu thereof six new sections relating to transferring the authority to approve chemical testing methods and devices from the department of health and senior services to the department of transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 306.114, 306.117, 577.020, 577.026, 577.037, and 577.208, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 306.114, 306.117, 577.020, 577.026, 577.037, and 577.208, to read as follows:

306.114. 1. No person convicted of or pleading guilty to a violation of section 306.111 or 306.112 shall be granted a suspended imposition of sentence, unless such person is placed on probation for a minimum of two years and a record of the conviction or plea of guilty is entered into the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol.

2. Chemical tests of a person's blood, breath, urine, or saliva to be considered valid under the provisions of sections 306.111 to 306.119 shall be performed according to methods and devices approved by the department of [health and senior services] **transportation** by licensed medical personnel or by a person possessing a valid permit issued by the department of [health and senior services] **transportation** for this purpose. In addition, any state, county, or municipal law enforcement officer who is certified pursuant to chapter 590, RSMo, may, prior to arrest, administer a portable chemical test to any person suspected of operating any vessel in violation of section 306.111 or 306.112. A

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 portable chemical test shall be admissible as evidence of probable cause to arrest
17 and as exculpatory evidence, but shall not be admissible as evidence of blood
18 alcohol content. The provisions of section 306.116 shall not apply to a test
19 administered prior to arrest pursuant to this section.

20 3. The department of [health and senior services] **transportation** shall
21 approve satisfactory techniques, devices, equipment, or methods to conduct tests
22 required by sections 306.111 to 306.119, and shall establish standards as to the
23 qualifications and competence of individuals to conduct analyses and to issue
24 permits which shall be subject to termination, suspension or revocation by the
25 department of [health and senior services] **transportation**.

26 4. A licensed physician, registered nurse, or trained medical technician,
27 acting at the request and direction of a law enforcement officer, shall withdraw
28 blood for the purpose of determining the alcohol content of the blood, unless the
29 medical personnel, in the exercise of good faith medical judgment, believes such
30 procedure would endanger the life or health of the person in custody. Blood may
31 be withdrawn only by such medical personnel, but such restriction shall not apply
32 to the taking of a breath test or a urine or saliva specimen. In withdrawing blood
33 for the purpose of determining the alcohol content in the blood, only a previously
34 unused and sterile needle and sterile vessel shall be used and the withdrawal
35 shall otherwise be in strict accord with accepted medical practices. A
36 nonalcoholic antiseptic shall be used for cleansing the skin prior to a
37 venapuncture. Upon the request of the person who is tested, full information
38 concerning the test taken at the direction of the law enforcement officer shall be
39 made available to such person.

40 5. No person who administers any test pursuant to the provisions of
41 sections 306.111 to 306.119 upon the request of a law enforcement officer, no
42 hospital in or with which such person is employed or is otherwise associated or
43 in which such test is administered, and no other person, firm, or corporation by
44 whom or with which such person is employed or is in any way associated shall be
45 civilly liable for damages to the person tested, except for negligence in
46 administering of the test or for willful and wanton acts or omissions.

47 6. Any person who is dead, unconscious or who is otherwise in a condition
48 rendering such person incapable of refusing to take a test as provided in sections
49 306.111 to 306.119 shall be deemed not to have withdrawn the consent provided
50 by section 306.116 and the test or tests may be administered.

306.117. 1. Upon the trial of any person for violation of any of the

2 provisions of section 306.111 or 306.112 the amount of alcohol or drugs in the
3 person's blood at the time of the act alleged as shown by any chemical analysis
4 of the person's blood, breath, urine, or saliva is admissible in evidence and the
5 provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the
6 admissibility or introduction of such evidence if otherwise admissible. Evidence
7 of alcohol in a person's blood shall be given the following effect:

8 (1) If there was five-hundredths of one percent or less by weight of alcohol
9 in such person's blood, it shall be presumed that the person was not intoxicated
10 at the time the specimen was obtained;

11 (2) If there was in excess of five-hundredths of one percent but less than
12 ten-hundredths of one percent by weight of alcohol in such person's blood, the fact
13 shall not give rise to any presumption that the person was or was not intoxicated,
14 but the fact may be considered with other competent evidence in determining
15 whether the person was intoxicated;

16 (3) If there was ten-hundredths of one percent or more by weight of
17 alcohol in the person's blood, this shall be prima facie evidence that the person
18 was intoxicated at the time the specimen was taken.

19 2. Percent by weight of alcohol in the blood shall be based upon grams of
20 alcohol per one hundred milliliters of blood.

21 3. A chemical analysis of a person's breath, blood, urine, or saliva, in
22 order to give rise to the presumption or to have the effect provided for in
23 subsection 1 of this section, shall have been performed as provided in sections
24 306.111 to 306.119 and in accordance with methods and standards approved by
25 the department of [health and senior services] **transportation**.

26 4. The provisions of this section shall not be construed as limiting the
27 introduction of any other competent evidence bearing upon the question whether
28 the person was intoxicated or under the influence of a controlled substance, or
29 drug, or a combination of either or both with or without alcohol.

577.020. 1. Any person who operates a motor vehicle upon the public
2 highways of this state shall be deemed to have given consent to, subject to the
3 provisions of sections 577.020 to 577.041, a chemical test or tests of the person's
4 breath, blood, saliva or urine for the purpose of determining the alcohol or drug
5 content of the person's blood pursuant to the following circumstances:

6 (1) If the person is arrested for any offense arising out of acts which the
7 arresting officer had reasonable grounds to believe were committed while the
8 person was driving a motor vehicle while in an intoxicated or drugged condition;

9 or

10 (2) If the person is under the age of twenty-one, has been stopped by a law
11 enforcement officer, and the law enforcement officer has reasonable grounds to
12 believe that such person was driving a motor vehicle with a blood alcohol content
13 of two-hundredths of one percent or more by weight; or

14 (3) If the person is under the age of twenty-one, has been stopped by a law
15 enforcement officer, and the law enforcement officer has reasonable grounds to
16 believe that such person has committed a violation of the traffic laws of the state,
17 or any political subdivision of the state, and such officer has reasonable grounds
18 to believe, after making such stop, that such person has a blood alcohol content
19 of two-hundredths of one percent or greater;

20 (4) If the person is under the age of twenty-one, has been stopped at a
21 sobriety checkpoint or roadblock and the law enforcement officer has reasonable
22 grounds to believe that such person has a blood alcohol content of two-hundredths
23 of one percent or greater;

24 (5) If the person, while operating a motor vehicle, has been involved in a
25 motor vehicle collision which resulted in a fatality or a readily apparent serious
26 physical injury as defined in section 565.002, RSMo, and has been arrested as
27 evidenced by the issuance of a uniform traffic ticket for the violation of any state
28 law or county or municipal ordinance with the exception of equipment violations
29 contained in chapter 306, RSMo, or similar provisions contained in county or
30 municipal ordinances; or

31 (6) If the person, while operating a motor vehicle, has been involved in a
32 motor vehicle collision which resulted in a fatality.

33 The test shall be administered at the direction of the law enforcement officer
34 whenever the person has been arrested or stopped for any reason.

35 2. The implied consent to submit to the chemical tests listed in subsection
36 1 of this section shall be limited to not more than two such tests arising from the
37 same arrest, incident or charge.

38 3. Chemical analysis of the person's breath, blood, saliva, or urine to be
39 considered valid pursuant to the provisions of sections 577.020 to 577.041 shall
40 be performed according to methods approved by the [state department of health
41 and senior services] **department of transportation** by licensed medical
42 personnel or by a person possessing a valid permit issued by the [state
43 department of health and senior services] **department of transportation** for
44 this purpose.

45 4. The [state department of health and senior services] **department of**
46 **transportation** shall approve satisfactory techniques, devices, equipment, or
47 methods to be considered valid pursuant to the provisions of sections 577.020 to
48 577.041 and shall establish standards to ascertain the qualifications and
49 competence of individuals to conduct analyses and to issue permits which shall
50 be subject to termination or revocation by the [state department of health and
51 senior services] **department of transportation**.

52 5. The person tested may have a physician, or a qualified technician,
53 chemist, registered nurse, or other qualified person at the choosing and expense
54 of the person to be tested, administer a test in addition to any administered at
55 the direction of a law enforcement officer. The failure or inability to obtain an
56 additional test by a person shall not preclude the admission of evidence relating
57 to the test taken at the direction of a law enforcement officer.

58 6. Upon the request of the person who is tested, full information
59 concerning the test shall be made available to such person.

60 7. Any person given a chemical test of the person's breath pursuant to
61 subsection 1 of this section or a field sobriety test may be videotaped during any
62 such test at the direction of the law enforcement officer. Any such video
63 recording made during the chemical test pursuant to this subsection or a field
64 sobriety test shall be admissible as evidence at either any trial of such person for
65 either a violation of any state law or county or municipal ordinance, or any
66 license revocation or suspension proceeding pursuant to the provisions of chapter
67 302, RSMo.

 577.026. 1. Chemical tests of the person's breath, blood, saliva, or urine
2 to be considered valid under the provisions of sections 577.020 to 577.041, shall
3 be performed according to methods and devices approved by the [state
4 department of health and senior services] **department of transportation** by
5 licensed medical personnel or by a person possessing a valid permit issued by the
6 [state department of health and senior services] **department of transportation**
7 for this purpose.

8 2. The [state department of health and senior services] **department of**
9 **transportation** shall approve satisfactory techniques, devices, equipment, or
10 methods to conduct tests required by sections 577.020 to 577.041, and shall
11 establish standards as to the qualifications and competence of individuals to
12 conduct analyses and to issue permits which shall be subject to termination or
13 revocation by the [state department of health and senior services] **department**

14 of transportation.

577.037. 1. Upon the trial of any person for violation of any of the provisions of section 565.024, RSMo, or section 565.060, RSMo, or section 577.010 or 577.012, or upon the trial of any criminal action or violations of county or municipal ordinances or in any license suspension or revocation proceeding pursuant to the provisions of chapter 302, RSMo, arising out of acts alleged to have been committed by any person while driving a motor vehicle while in an intoxicated condition, the amount of alcohol in the person's blood at the time of the act alleged as shown by any chemical analysis of the person's blood, breath, saliva or urine is admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the admissibility or introduction of such evidence if otherwise admissible. If there was eight-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen was taken.

2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of breath.

3. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was intoxicated.

4. A chemical analysis of a person's breath, blood, saliva or urine, in order to give rise to the presumption or to have the effect provided for in subsection 1 of this section, shall have been performed as provided in sections 577.020 to 577.041 and in accordance with methods and standards approved by the [state department of health and senior services] **department of transportation**.

5. Any charge alleging a violation of section 577.010 or 577.012 or any county or municipal ordinance prohibiting driving while intoxicated or driving under the influence of alcohol shall be dismissed with prejudice if a chemical analysis of the defendant's breath, blood, saliva, or urine performed in accordance with sections 577.020 to 577.041 and rules promulgated thereunder by the [state department of health and senior services] **department of transportation** demonstrate that there was less than eight-hundredths of one percent of alcohol in the defendant's blood unless one or more of the following considerations cause the court to find a dismissal unwarranted:

(1) There is evidence that the chemical analysis is unreliable as evidence of the defendant's intoxication at the time of the alleged violation due to the lapse

36 of time between the alleged violation and the obtaining of the specimen;

37 (2) There is evidence that the defendant was under the influence of a
38 controlled substance, or drug, or a combination of either or both with or without
39 alcohol; or

40 (3) There is substantial evidence of intoxication from physical
41 observations of witnesses or admissions of the defendant.

577.208. 1. Chemical tests of the person's breath, blood, or urine to be
2 considered valid shall be performed according to methods and devices approved
3 by the [state department of health and senior services] **department of**
4 **transportation** and shall be performed by licensed medical personnel or by a
5 person possessing a valid permit issued by the [state department of health and
6 senior services] **department of transportation** for this purpose. A blood test
7 shall not be performed if the medical personnel, in good faith medical judgment,
8 believe such procedure would endanger the health of the person in custody.

9 2. Upon request of the person tested, full information concerning the test
10 shall be made available to him.

11 3. No person administering a chemical test under this section and sections
12 577.206, 577.211 and 577.214, or any other person, firm or corporation with whom
13 he is associated, shall be civilly liable for damages to the person tested except for
14 negligence or by willful or wanton act or omission.

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